

term for trademark registrations would be reduced from fifteen years to ten years; (6) an autonomous Institute for Industrial Property would be created that would be subject to the jurisdiction of the Ministry of Development; and (7) the fees payable to the Registry would be increased. After review by Congress, the bill will be submitted to the Council of Ministers for final review.

Venezuela's Supreme Court held that the registration of a patent outside of Venezuela constitutes *prima facie* evidence that the patent meets the requirements of novelty and originality as required by Venezuelan law. This decision overrules a prior resolution of the Development Ministry in which it affirmed the denial of a patent registration by the Registry Office. The Supreme Court decision contained a strong dissenting opinion which noted that a foreign patent owner should be required to demonstrate that the patent laws of the issuing country are similar to those of Venezuela.

#### D. LABOR

On November 27, 1990, Venezuela's Congress approved a bill for a new Organic Labor Law (Labor Law). On December 2, 1990, the President of the Republic of Venezuela signed the bill into law. The new Labor Law merges Venezuela's prior Labor Law, the prior Labor Regulations, the Law Against Unjustified Dismissals, Decree Law No. 440 on Collective Contracts by Branches of Industry, and the Law Concerning Preferences for Claims of Laborers. The majority of the Labor Law's provisions became effective May 1, 1991. The Labor Law substantially increases the benefits and rights of employees. The result will be greater costs to employers in the form of an increase in termination indemnities that must be paid to employees upon the termination of the employment relationship, monetary penalties for employers that violate individual work contracts, and an increase in paid maternity leave and vacation time.

## Poland\*

The structural transformation of the economy and administration of Poland, initiated in 1990, is based on two pillars: accelerated liberalization and privatization. These premises provide the basic direction of the evolution of the Polish legal system. This evolution can be broken down into three subject areas: the privatization of the economy's state sector, the decentralization of administration and denationalization of state-owned property, and the reduction of the state's monopolistic position in some domains.

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## I. Privatization of the State Sector

Privatization can be pursued under the Act of July 13, 1990, regarding the privatization of state property,<sup>1</sup> and under the April 29, 1985, Amendment concerning land management.<sup>2</sup> This Amendment regulates the legal status of land and real estate owned by the State Treasury.

### A. PRIVATIZATION OF STATE-OWNED ENTERPRISES

The Sejm, Poland's Lower House of Parliament, determines the development of the privatization of state-owned enterprises and allocates the proceeds from this operation within the framework of the Budget Act.<sup>3</sup> The office of the Minister for Ownership Transformations (Ministerstwo Przekształceń Własnościowych) enforces the decisions made by the Sejm.<sup>4</sup> Privatization involves state-owned enterprises and existing limited liability companies formed by the State Treasury. Privatization may assume two forms, which are regulated by the Amendment to the Privatization Act of November, 29, 1990.<sup>5</sup>

#### 1. *Privatization Based on the Sale of Capital*

Privatization based on the sale of capital is divided into two stages. Stage one consists of transforming an enterprise into a stock company owned entirely by the State Treasury. This is a full transformation. Under a new development in the Polish legal system, the new company assumes all the rights and obligations of the transformed enterprise concerning both private and legal obligations and previous administrative decisions. The Minister for Ownership Transformations makes all decisions concerning transformation either at the request of the enterprise or on his own initiative. A supervisory board is established in the new company and the company's employees select one-third of the board members. This principle cannot be changed as long as one-half of the company's shares belongs to the State Treasury or the employees.

The second stage of this form of privatization is a public offering of the company's shares to third parties. This rule has two exceptions. First, a concession exists, similar to the well-known model of the Employee Stock Ownership Plan (ESOP), for employee stock ownership. Up to 20 percent of the company's shares are made available to employees at a price of one-half of the market value. Second, foreign natural and legal persons and their companies

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1. Dziennik Ustaw [Dz. U.] No. 51, item 298.

2. Law of April 29, 1985, on land management and expropriation of real property, Uniform text of Dz. U. of 1991, No. 30, item 127.

3. Budget Act for 1991 of Feb. 23, 1991, Dz. U. No. 21, item 89.

4. Law of July 13, 1990, on establishing the Office of the Minister for Ownership Transformations, Dz. U. No. 51, item 299.

5. Law of Nov. 29, 1990, on extending the operation of the Act on privatization of state-owned enterprises, Dz. U. No. 85, item 498.

must obtain the permission of a competent foreign investments agent to purchase 10 percent or more of the company's shares.

New companies sell shares of stock through public offering, auction, or negotiations undertaken on the basis of a public invitation. Citizens may come into the possession of shares through the distribution of privatization vouchers, free of charge, in the form of payment for shares,<sup>6</sup> a sale on credit terms, or a sale in installments. The shares not purchased by third parties shall be transferred by the Minister for Ownership Transformations, by agreement, to the receivership body of a selected financial institution.

## 2. *Enterprise Privatization through Liquidation*

This form of privatization involves either the liquidation of the entire enterprise as a separate corporate body or the liquidation of its organized parts. Liquidation may be achieved by sale, contribution to the company, or lease. In the case of a lease, the law gives precedence to companies founded by the employees.

## 3. *Initial Experiences*

In 1990, the five best state-owned companies were privatized as part of a pilot project. The initial privatizations have proven that banks, insurance companies, investment companies, and a number of small production companies were more interested in investing their capital than the "money-grubbers" to whom the offer was originally addressed. There are now plans to abandon case by case privatizations in favor of a general distribution of privatization vouchers in order to accelerate the creation of a capital market.

## B. PRIVATIZATION OF LAND AND REAL ESTATE BELONGING TO THE STATE TREASURY

Land and real estate belonging to the State Treasury or to municipalities may be sold to natural or legal persons, handed over for perpetual usufruct,<sup>7</sup> usufruct, leased, or rented. Foreign nationals may also benefit from this possibility, assuming the sale or perpetual usufruct is approved by the Minister of Internal Affairs. In selling the real estate, the State Treasury gives preference to the previous owners of the property seized by the government. The former owners can reacquire their property, provided the price they offer equals the market value in the case of real property or its reproduction value in the case of other immovable property. With the exception of immovable property, sale or perpetual usufruct is performed by auction. Municipalities and government administration provide a list of real estate intended for alienation by auction.

6. The decision on this matter rests with the Sejm.

7. That is, 99 years.

So far, this property transfer method is the only procedure that has reprivatized property seized by the state following nationalization and land reform.

## **II. Decentralization of Administration and Denationalization of State Property**

Decentralization and denationalization objectives have been realized pursuant to the Act of March 8, 1990<sup>8</sup> that provided for the reactivation of local government and the separate creation of municipal property.

### **A. LOCAL GOVERNMENT**

The Act of March 8, 1990 establishes a one-tiered formula of local government and creates the municipality as a legal entity, separate from the state, that holds public, private, and property rights. Municipalities must now responsibly perform public tasks in their own right. However, a municipality's independence in the performance of public tasks is a subject to protection under administrative jurisdiction. The lawmakers adopted the clause of general competence signifying that municipalities control all matters of local importance not reserved for other entities. Municipalities may form unions of municipalities and as such become legal entities that operate pursuant to their own articles of incorporation. Lawmakers have placed regional state administration at the level of the province (województwo).

### **B. MUNICIPAL PROPERTY AND THE ECONOMIC ACTIVITY OF THE MUNICIPALITIES**

According to the Act of March 8, 1990, municipal property includes property and property rights belonging to the municipality and other corporate municipal bodies, including enterprises. Municipalities received this property free of charge either by virtue of the Act of May 10, 1990,<sup>9</sup> under a property transfer procedure instituted by state administration. The present core of municipal property consists of state property formerly under the management of the People's Councils and enterprises under their control.

For the purpose of carrying out their tasks, municipalities may establish organizations, including enterprises, and enter into agreements with other entities. Municipalities and other municipal corporate bodies are prohibited from engaging in economic activities that are beyond the scope of a public utility task, unless public demands require them to do so.

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8. Local Government Law of Mar. 8, 1990, Dz. U. No. 16, item 95.

9. Law of May 10, 1990, regulations introducing the Local Government Law & the Local Government Employees Act, Dz. U. No. 32, item 191.

### III. Reduction of State Monopoly in Some Domains

The reduction of state monopoly is an ongoing process. In 1990 the government initiated reforms in insurance and communications.

#### A. INSURANCE MARKET

The Insurance Act of July 28, 1990 regulates the insurance market.<sup>10</sup> When drafting the Act, lawmakers considered the directives of the European Community, particularly the United Kingdom. This Act effectively ends state monopoly in insurance and as a general rule, makes insurance noncompulsory.

State supervision of the insurance market still exists, but only to provide insurance security to persons who benefit from the services of insurance companies. To fulfill this intention, the Act includes regulations that mandate the insurer to maintain funds that are equal to a margin of solvency and a required amount of guaranty capital, depending on the type of insurance. The Act also prohibits the concurrent sale of life insurance and other types of insurance, and bans direct commercial activities. Moreover, the Act provides conditions that the insurance companies must fulfill if they invest. A consequence of this financial supervision is the restriction of the organizational form of an insurance company to a joint stock or mutual insurance organization. An insurance company must obtain a license from the Minister of Finance to begin operation.

A company with foreign equity may engage in the insurance business, provided the company fulfills the requirements set for Polish insurers and its foreign share capital is at least one-half of the required minimum guaranty capital. The government has imposed on foreign insurers a time limit for operations until December 31, 1992. In addition, the government permits a foreign insurer to operate in Poland on the principle of reciprocity and only through an appointed insurer representative who is a permanent resident of Poland. The foreign insurer is also obliged to make a guaranty deposit equal to 25 percent of the minimum guaranteed capital to secure its future obligations; the guaranty deposit is charged into the company's own assets.

#### B. COMMUNICATION

The Communication Act of October 23, 1990, established reform in communication covering postal and telecommunication services.<sup>11</sup> This Act provides for an institutional separation between postal services and telecommunications. Postal services have remained a state monopoly controlled by the state public utility enterprise Poczta Polska. In the area of telecommunication services, the state has introduced a system of licensing, but has retained a limited monopoly.

10. Dz. U. No. 59, item 344.

11. Dz. U. No. 86, item 504.

In a separate ministerial regulation, the Minister of Communication determines the list of equipment, lines, and networks that may be installed and operated without a license. Under a licensing agreement, telecommunication services are performed by both the state-owned enterprise Telekomunikacja Polska SA (Polish Telecommunications, Inc.), and entities that received a license from the Minister of Communication. The Act does not provide for the licensing of some services. International telecommunications of a global nature, exclusively for foreign entities, are not licensed if the share equity of these entities in the company's capital or stock capital exceeds 33 percent. Similarly, there is no licensing of entities offering inter-urban telecommunication lines, networks, or services if the share equity of these entities exceeds 49 percent. The regulations of the Communication Act are relative to international agreements. The law recognizes *expressis verbis*—the principle that when international agreements are ratified by Poland to regulate the area of telecommunications, those agreements shall apply.